

## **REMARKS**

Claims 1-21 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

### **Section 101 Rejection:**

The Examiner rejected claim 11 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Applicants respectfully traverse this rejection. Contrary to Examiner's assertion, claim 11 may not be reasonably interpreted as consisting of software *per se*. According to the section of the MPEP on Patentable Subject Matter Eligibility, MPEP 2106.II.C, "Where means plus function language is used to define the characteristics of a machine or manufacture invention, such language must be interpreted to read on only the structures or materials disclosed in the specification and "equivalents thereof" that correspond to the recited function. Two *en banc* decisions of the Federal Circuit have made clear that the USPTO is to interpret means plus function language according to 35 U.S.C. § 112, sixth paragraph. *In re Donaldson*, 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994) (en banc); *In re Alappat*, 33 F.3d 1526, 1540, 31 USPQ2d 1545, 1554 (Fed. Cir. 1994) (en banc)." The structures and materials disclosed in Applicant's specification clearly include computer hardware such as a processor and memory (see Fig. 2). Therefore, per the Patentable Subject Matter Eligibility guidelines in the MPEP, the rejection of claim 11 is improper.

On p. 2 of the Office Action, the Examiner states: "Even though Applicant has invoked the rebuttable presumption that 35 USC 112, 6<sup>th</sup> paragraph applies in the claim interpretation of the 'means,' corresponding 'structure' in the disclosure is not automatically and inherently limited to hardware inclusive embodiments." The Examiner's statement is in direct violation of 35 USC 112, 6<sup>th</sup> paragraph, well-settled case law, and the MPEP 2106.II.C. Means elements most certainly are automatically and inherently limited to hardware inclusive embodiments. In fact this is the very essence of

35 USC 112, 6<sup>th</sup> paragraph, and is made mandated by the Patentable Subject Matter Eligibility guidelines in the MPEP.

On p. 3 of the Office Action, the Examiner states: “the structural equivalents for performing the means would be interpreted by one of ordinary skill in the art as software per se.” The Examiner’s statement is self-contradictory. By definition, “structural” equivalents cannot be software per se.

### **Section 103(a) Rejections:**

The Examiner rejected claims 1, 5, 6, 10-12, 16, 17 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Gigliotti et al. (U.S. Patent 6,393,458) (hereinafter “Gigliotti”), claims 2-4, 7-9, 13-15 and 18-20 as being unpatentable over Gigliotti in view of AAPA. Applicants respectfully traverse these rejections for at least the following reasons.

In regard to claim 1, contrary to the Examiner’s assertion, the cited art does not teach or suggest *one or more client machines each configured to implement one or more clients of the application server, wherein each client on a respective one of the one or more client machines is configured to create a plurality of client-side Object Request Brokers (ORBs) on the client machine, wherein each client-side ORB is coupled to a server-side ORB of a different one of the plurality of application server instances.* The Examiner equates client objects 45, 46, 48 and 50 of Gigliotti to the one or more clients recited in Applicants’ claim 1. However, client objects 45, 46, 48 and 50 of Gigliotti do not each create a plurality of client-side Object Request Brokers (ORBs) on the client machine(s), wherein each client-side ORB is coupled to a server-side ORB of a different one of the plurality of application server instances, as recited in Applicants’ claim 1. Gigliotti is completely silent on how any client-side ORBs are created. Gigliotti certainly does not suggest that each one of client objects 45, 46, 48 and 50 create a plurality of client-side Object Request Brokers (ORBs) on the client machine(s). In fact, Gigliotti states just the opposite. At col. 8, lines 3-6, Gigliotti specifically states that a client uses

only a single ORB (“via **an** ORB”) (emphasis added).

Further in regard to claim 1, contrary to the Examiner’s assertion, the cited art does not teach or suggest that *each client on a respective one of the one or more client machines is configured to select one of the plurality of client-side ORBs created by that client on the client machine according to a load balancing scheme in response to a request to access the application server.* In regard to this limitation, the Examiner cites col. 6, lines 37-39, of Gigliotti which merely states: “In an exemplary embodiment, a load balancer object determines a balanced distribution for events which have been published or initiated by the client.” First of all, this is referring to the operation of the load balancer, not the client. The client objects 45, 46, 48 and 50 in Gigliotti do not perform any selection from among a plurality of client-side ORBs. In fact, as shown above, each client in Gigliotti uses only a single ORB.

Furthermore, to determine “a balanced distribution for events which have been published or initiated by the client,” the load balancer in Gigliotti is **not** described as selecting one of the plurality of pre-existing client-side ORBs created by that client on the client machine. There is no mention whatsoever in Gigliotti of the load balancer selecting one of a plurality of pre-existing client-side ORBs created by the requesting client. While the load balancer in Gigliotti does select a server host to send an event published by a client, Gigliotti does not describe that the load balancer selects among pre-existing client-side ORBs created by that client on the client machine. Even if the load balancer in Gigliotti used an ORB to send the event to the server host, the ORB may be dynamically obtained or created at that time. There is no description in Gigliotti of selecting among pre-existing client-side ORBs. Moreover, there is certainly no suggestion in Gigliotti of selecting among a plurality of pre-existing client-side ORBs created by the particular client that initiated the event (request).

On p. 4 of the Office Action, the Examiner states: “it would have been obvious to one of ordinary skill in the art, that ORBs exist at both the client and server in order for the ORB protocol to be used.” However, even if ORBs existed at both the client and

server in Gigliotti, that would still not result in the specific limitations recited in Applicants' claim 1. For example, even if ORBs existed at both the client and server in Gigliotti, that would not mean that each client in Gigliotti creates a **plurality** of client-side Object Request Brokers (ORBs) on the client machine, wherein each client-side ORB is coupled to a server-side ORB of a different one of the plurality of application server instances, as required by Applicants' claim 1. Nor would it mean that each client in Gigliotti *selects one of the plurality of client-side ORBs created by that client on the client machine according to a load balancing scheme in response to a request to access the application server.* Thus, a *prima facie* rejection has not been established.

Thus, for at least the reasons presented above, the rejection of claim 1 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks as those above regarding claim 1 apply to claims 6, 11, 12, and 17.

In regard to claim 3, contrary to the Examiner's assertion, Gigliotti and AAPA does not teach or suggest that said creation of a plurality of client-side ORBs and said selection of one of the plurality of client-side ORBs according to a load balancing scheme are performed by a Context Factory class. The Examiner refers to the admitted existence of JNDI and states that it would have been obvious to modify Gigliotti to include the use of JNDI. However, merely using JNDI in Gigliotti would not result in the specific limitations recited in claim 3. Therefore, the Examiner has failed to state a *prima facie* rejection. More specifically, employing JNDI in Gigliotti would not mean that the clients in Gigliotti would use a Context Factory class to both create and select among a plurality of client-side ORBs. There is absolutely no evidence of record whatsoever to support the rejection of this claim. Similar remarks apply to claims 8, 14, and 19.

## **CONCLUSION**

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-71800/RCK.

Respectfully submitted,

/Robert C. Kowert/  
Robert C. Kowert, Reg. #39,255  
Attorney for Applicants

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.  
P.O. Box 398  
Austin, TX 78767-0398  
Phone: (512) 853-8850

Date: August 25, 2008